

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

A.W.A.R.E., INC.

Employer

and

Case 19-RC-14072

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
MONTANA STATE COUNCIL 9, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular and substitute treatment services technicians and lead technicians employed by the Employer at its Galen, Montana, facility; but excluding all office clerical employees, guards and supervisors (including Program Manager Iis and the administrator) as defined by the Act, and all other employees.

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<sup>1</sup> The parties waived the filing of briefs.

The Employer is engaged in the operation of several mental health-related facilities in various cities in the state of Montana, including the facility involved herein, located in Galen, Montana. Petitioner seeks a unit of treatment services technicians (herein, TSTs) employed on the Galen campus. The Employer contends that four lead technicians are statutory supervisors; otherwise, the parties are in agreement.

The Galen campus includes a school, a gymnasium, and four residences. The residences are group homes for live-in clients - emotionally disturbed males between the ages of 12 and 19. Two or three clients live in each home. In each home, two staff are present during the "awake" hours every day, and one staff is present at night during sleeping hours. Each home is supervised by a "program manager II,"<sup>2</sup> who reports to the administrator, Craig Littlefield.<sup>3</sup> The program managers work Monday through Friday. The lead technicians who are at issue herein are in charge of the homes on the weekends.

Hiring, firing, and discipline are all handled by the administrator and the program managers. Lead technicians have no involvement in hiring. With respect to firing and discipline, there is evidence that lead technicians have made reports of misconduct. Such reports led to further investigation by the relevant program manager and the administrator, including independent interviews of the employee involved. There is no evidence that any lead technicians make recommendations with respect to discipline or firing.

There are two examples of relevant discipline in the record. In one example, a lead technician reported to Littlefield that one of the TSTs he had been working with had very poor judgment and didn't seem to have any rapport with the clients. Littlefield and the relevant program manager then talked to the employee involved and gave the employee the opportunity to improve. After a few weeks, when no improvement was made, the employee was reduced from a full-time position to a substitute.

In the second example, Littlefield himself had observed that an employee displayed poor judgment and behaved in a way he described as "mean to the children." He asked the lead technician for that individual's observations of the employee. Again, Littlefield and the program manager discussed the problems with the employee and when, over a period of time, no improvement occurred, the employee was disciplined.

If a TST is absent on a weekend shift, the lead technician can call in a substitute TST. There is a list of about 13 substitutes for this purpose. The individuals on the list are employed specifically as substitutes and are not regularly employed otherwise as TSTs.<sup>4</sup> A lead technician testified that when he needs to call in a substitute, he simply refers to the list and starts calling, usually first calling individuals he has worked with in the past.

There is no evidence or contention that lead technicians have any authority to transfer a TST to a different residence, to assign and direct employees, or play any role in suspending,

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<sup>2</sup> There are no "program manager Is". That position was reclassified as "lead technicians" several months ago.

<sup>3</sup> The parties stipulated that the program managers (a/k/a "Program Managers II") and Littlefield are supervisors within the meaning of the Act.

<sup>4</sup> The parties agreed that substitute TSTs, who also may be, and often are, called in to work during the week as well, are included in the Unit, and that no special eligibility formula is required for them.

laying off, recalling, promoting, or rewarding employees, or have any authority to adjust grievances.

On weekends, when they are not working, program managers are available by telephone, and a lead technician testified that he often calls his program manager. Lead technicians normally work only on weekends, beginning at 1:00 p.m. on Fridays. Every Friday at 2:00 p.m., a "management" meeting, which lead technicians attend, is held. The meetings address such matters as policy changes from the corporate office, and any duties that need to be assigned to staff on the weekend. Lead technicians participate in the discussions, but there is no evidence that they make any recommendations or decisions.

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The record does not establish that lead technicians have any authority to discipline employees, or to effectively recommend discipline. Rather, the evidence shows that lead technicians may report misconduct, or may be asked for their observations of misconduct, but do not make any recommendations; moreover, higher authority conducts an independent investigation and makes any disciplinary decisions. The Board has found that reliance by higher authority on *information* given by senior employees does not establish supervisory status in the absence of affirmative evidence of effective recommendation of actions falling within supervisory indicia. *Injected Rubber Products Corp.*, 258 NLRB 687, 691 (1981).

Further, evidence that lead technicians have authority to call in substitutes for absentees does not establish statutory authority to assign and direct. There is an established list of substitutes to call; the lead who testified stated he usually first called people he knew, but the record does not show that any independent judgment is required in making any selection. The Board has said that, to establish supervisory status, there must be a showing that the use of independent judgment is required. *T.K. Harvin & Sons*, 316 NLRB 510, 530 (1995).

Attendance in management meetings does not, without more, establish supervisory status, as there is no evidence that lead technicians make any recommendations or decisions regarding personnel matters in those meetings. There is no evidence that personnel matters, such as the discipline of a specific employee, are discussed in the meetings.

I conclude, therefore, that the lead technicians are not supervisors within the meaning of the Act.

There are approximately 36 employees in the Unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit

who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, MONATA STATE COUNCIL 9, AFL-CIO.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before March 29<sup>th</sup>, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 5, 2001.

Dated at Seattle, Washington this 22<sup>nd</sup> day of March, 2001.

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